



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 16, 2003

Ms. Tenley Aldredge  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2003-3318

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181147.

The Travis County District Attorney's Office (the "district attorney") received a request for all information relating to a certain case. You state that you are releasing all of the requested information with the exception of the information you submitted to this office. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of criminal history report information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI

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<sup>1</sup>You originally raised sections 552.103 and 552.108 as well. However, you state that you no longer wish to invoke sections 552.103 and 552.108 of the Government Code.

obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, assuming that you have CHRI in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor.

You argue that some of the submitted information is excepted from release under section 552.101<sup>2</sup> as it consists of compiled CHRI the release of which is prohibited under common-law privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (making individual's criminal history compiled by a governmental entity confidential as such compilation takes on a character that implicates the individual's right to privacy). The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). However, we find that none of the information at issue consists of a compilation of any individual's criminal history as contemplated by *Reporters Committee*. Accordingly, you may not withhold any of the submitted information as compiled CHRI under section 552.101.

Finally, you argue that some of the submitted information is excepted from disclosure under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license number we have marked under section 552.130.

In summary, assuming you have CHRI in your possession, you must withhold it under section 552.101 in conjunction with chapter 411 of the Government Code. A Texas driver's license number must be withheld under section 552.130 of the Government Code. You must release the remaining information to the requestor.

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<sup>2</sup>Section 552.101 also encompasses information protected by common-law privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan E. Bowden". The signature is fluid and cursive, with the first name "Nathan" being more prominent.

Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/VGS/sdk

Ref: ID# 181147

Enc: Submitted documents

c: Mr. Sean Breen  
Herman Howry & Breen  
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Austin, Texas 78705-5408  
(w/o enclosures)